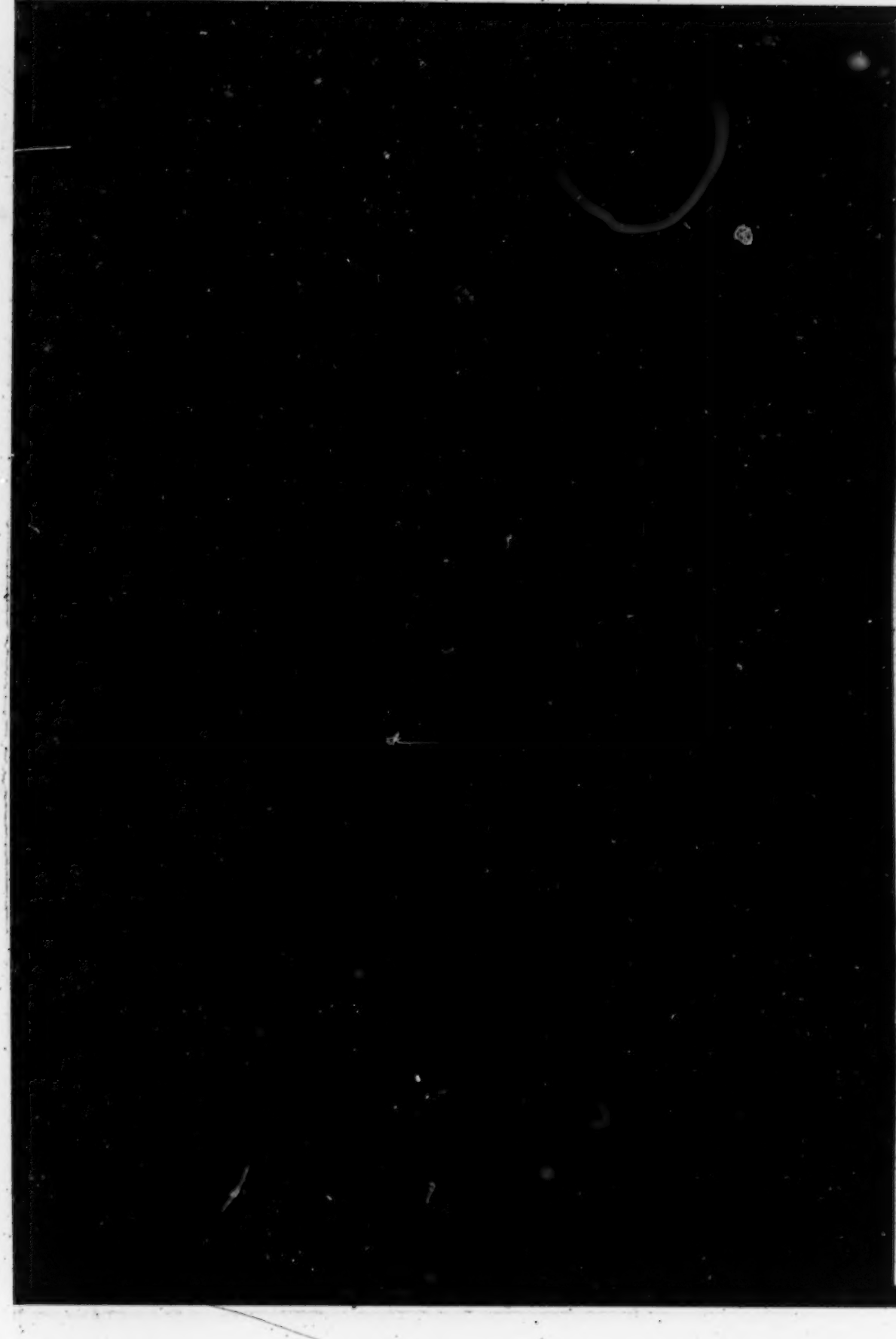

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263-633—67——1

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1296

LUPTON MANUFACTURING COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA, ALUMINUM COMPANY OF AMERICA, AND CUPPLES PRODUCTS COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

MOTION TO DISMISS

Pursuant to Rule 16(1)(a) of the Rules of this Court, the United States moves that the appeal be dismissed.

STATEMENT

This is a direct appeal from an order of the district court (J.S. App. 1a–4a) denying the application of appellant, the Lupton Manufacturing Company ("Lupton"), to intervene in divestiture proceedings being conducted pursuant to the final judgment in *United States of America* v. *Aluminum Company of America and Cupples Products Corporation*, 253 F. Supp. 718, 247 F. Supp. 308, affirmed *per curiam*, 382 U.S. 12.

1. In this action, brought on April 27, 1961, the United States charged that the acquisition by Aluminum Company of America ("Alcoa") of all of the outstanding stock of Cupples Products Corporation ("Cupples") violated Section 7 of the Clayton Act, 15 U.S.C. 18. At the time, Alcoa was the leading producer of primary aluminum and Cupples the leading fabricator of aluminum curtain wall. The complaint alleged, *inter alia*, that the acquisition would cause a substantial lessening of competition, and tend to create a monopoly, in the fabrication and sale of metal and aluminum curtain wall, by eliminating potential competition between Alcoa and Cupples and by giving Cupples competitive advantages over fabricators not integrated with primary aluminum producers. The government asked for divestiture by Alcoa of Cupples' stock.

In May 1962, after Alcoa had begun the construction of a new curtain wall facility at Corona, California, the government moved for a preliminary injunction to restrain further construction of the Corona plant on that ground that Alcoa intended to retain that plant for its own operation even if it was ordered after trial to divest Cupples, that it was using Cupples' know-how in the planning and construction of the plant, that it planned to transfer Cupples' personnel to Corona, that there would be further commingling of assets and that Cupples' goodwill would be diluted. Although the court did not enjoin construction of the Corona plant, it did issue a preliminary injunction on July 30, 1962, enjoining defendants from any

[1] The order of the district court on the government's motion for a preliminary injunction is reported, together with the final

further commingling of business assets; requiring Cupples to continue exercising independent judgment and activity in its operations, to publicize the Cupples name distinctly and to maintain separate pension plans and separate sales organizations; barring the transfer of Cupples employees to Alcoa and the sale by Alcoa of Cupples stock; and requiring that the Corona plant be operated as a part of Cupples and that the products manufactured there be advertised and sold as Cupples products.

On September 22, 1964, the district court found that Alcoa's acquisition of Cupples violated Section 7 (233 F. Supp. 718). After a further proceeding to formulate appropriate relief, the court on December 4, 1964, entered a final judgment requiring Alcoa to divest itself of all interest in Cupples and in the Corona plant (247 F. Supp. 308), at the same time continuing in effect the preliminary injunction of July 30, 1962.

Alcoa appealed the final judgment directly to this Court, but challenged only the requirement that it divest the Corona plant. This Court affirmed summarily, *Aluminum Company of America* v. *United States*, 382 U.S. 12. On February 18, 1966, the district court approved a plan which required Alcoa to accomplish divestiture by finding a purchaser for Cupples.[2] (App. B, *infra*, pp. 20–23.)

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judgment in the action and an order modifying the order of July 30, 1962, to permit the closing of the Corona plant in *United States* v. *Aluminum Company of America*, 247 F. Supp. 308, 316–317, reprinted in App. A, *infra*, pp. 15–19.

[2] The plan requires an Alcoa representative to approach firms or individuals with a possible interest in acquiring Cupples and

2. In the fall of 1963, the Port of New York Authority decided to build a World Trade Center building in New York City, consisting of twin 110-story towers overlooking the Hudson River, which would require a large amount of aluminum curtain wall. Alcoa and Cupples attempted to obtain the contract in competition with appellant, a producer of curtain wall, and other companies. Alcoa's bid stated that if Alcoa was awarded the contract Cupples would perform the work. The Port Authority required that the bid be submitted by Alcoa, but consented to assignment of the contract to Cupples (J.S. App. A, p. 3a). Formal bids were submitted to the Authority on or before December 2, 1966, and on December 5, 1966, Alcoa was notified that it was the low bidder (R. 218, Tr. 20).

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provide them with relevant financial and factual information. If no serious leads are developed within 90 days, several business brokers with national connections are to be retained, on a nonexclusive basis, to aid in finding a purchaser. If, after an additional 90 days, the combined efforts of Alcoa and the brokers have not developed serious leads, Alcoa must take appropriate further steps to find a purchaser. Under this provision Alcoa has advertised Cupples for sale in several publications, including the *American Metal Market* and the *Wall Street Journal*. Alcoa is also required to file reports with the district court at 90-day intervals setting forth the steps taken in execution of the plan. In August 1966, Alcoa's plan to sell Cupples to two of its principal officers was disapproved by the district court after the United States objected that the terms of the proposed sale would not ensure Cupples' independence. 257 F. Supp. 466. After Alcoa reported in February 1967 that no purchaser had been found and requested an extension to accomplish divestiture, the United States moved the court to speed the accomplishment of divestiture by transferring Cupples' stock to independent trustees under instructions that they are to sell the firm within six months of their appointment (J.S. App. D). This motion is pending.

On December 5, 1966, appellant for the first time complained to the Antitrust Division of the Department of Justice that the Alcoa-Cupples bid violated the injunction and final judgment in this case. The Department conducted an investigation, required Alcoa to furnish it detailed information, and carefully reviewed the entire transaction. It obtained assurances from Alcoa that the contract would be assigned to Cupples, that Cupples, not Alcoa, would be credited with the goodwill arising from award of the contract, and that any purchaser of Cupples could seek reformation of any unfulfilled Alcoa-Cupples contract on the ground it had been entered into improvidently. The government was also assured by Cupples' president that he considered the contract to be profitable for Cupples. In the light of this data, the Department concluded that the transaction did not violate the court's orders, injure Cupples or imperil divestiture (see, further, *infra*, pp. 9–10).

On January 4, 1967, appellant moved for leave to intervene as a plaintiff in this action both as of right under F.R. Civ. P. 24(a) and by permission of the court under F.R. Civ. P. 24(b), and requested an injunction restraining Alcoa and Cupples "from taking any action with regard to a bid submitted to the New York Port Authority to fabricate and erect the aluminum curtain wall on the World Trade Center building * * *" (J.S. App. 1a). Appellant asserted that Alcoa's action in submitting the bid and its assistance to Cupples in preparing the bid violated both the preliminary injunction and final judgment. Alcoa and the United States opposed the motion to

intervene, but the government did not object to the court's hearing Lupton as *amicus curiae*.

The district court conducted a hearing in which appellant was permitted to present evidence in support of its motion, including the testimony of Cupples' president and three Cupples employees, whom it had subpoenaed, and of appellant's president. The court, after hearing appellant's evidence, denied intervention. It noted that issuance of the injunction would benefit appellant but be a great detriment to Cupples. It further ruled "that the Antitrust Division has adequately protected the interest of the public in this proceeding from the beginning and at the present time. The Court's primary purpose at this point is to sell Cupples to some purchaser as a strong independent company. And the Court is of the opinion that the obtaining of this particular job, the World Trade Center, will be of benefit to Cupples in that regard" (Tr. 65). The court subsequently entered a formal opinion (J.S. App. A; 41 F.R.D. 342). On January 24, 1967, the Port Authority announced that Alcoa had won the contract and that Alcoa would assign it to Cupples.

ARGUMENT

Appellant, a manufacturer of aluminum curtain wall, applied to the district court below to intervene in the remedial phase of the Alcoa-Cupples merger case in order to block Alcoa-Cupples' successful bid for the contract to supply the aluminum curtain wall for the World Trade Center in New York. After an evidentiary hearing, the court denied intervention,

finding that the retention of the contract by Cupples would help, not harm, the prospects for prompt and effective divestiture of Cupples by Alcoa and was not barred by the preliminary injunction earlier entered by the court. This ruling is correct, and further review is unwarranted. We discuss first the contention that appellant was entitled to intervene as of right.

1. Intervention as of right in the federal district courts is governed by Rule 24(a) of the Federal Rules of Civil Procedure. As recently amended,[3] the rule precludes such intervention whenever the applicant's interest is adequately represented by existing parties. What constitutes adequate representation in a government antitrust suit was before the Court this Term in *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129. In that case, the Court held that where the government accepts a remedial decree that falls short of complete divestiture as directed by the mandate of this Court in the case, the government's representation of the interest of customers of the acquired firm in the proceeding is inadequate and they may intervene as of right. This ruling cannot assist appellant here. There is no mandate of this Court directing divesture.[4] The only mandate is the district court's and that court had a broad discretion in interpreting its own decrees. Moreover,

[3] The amended rule is applicable here since the relevant district court proceedings postdated July 1, 1966, the effective date of the amendment.

[4] The Court did summarily affirm the district court's final decree, 382 U.S. 12, but the only issue raised in this Court on that appeal related to the Corona plant and was unrelated to the World Trade Center contract.

263-628—67——2

here it is the applicant for intervention, not the government, that would deny the acquired firm a valuable asset which should be divested along with its other properties so as to enhance the likelihood that the remedy of divestiture will be practicable: the World Trade Center contract obtained by Cupples after the acquisition. In short, as explained more fully below, the government's representation of the interest asserted by appellant was adequate under the standards of the *Cascade* decision.

We do not understand appellant to base its claim of intervention upon a theory that it has a right to bid for the World Trade Center contract free from the competition of Cupples. Obviously, the antitrust laws confer no such right. Rather, appellant asserts an interest, identical to the government's, in free and unrestricted competition among aluminum curtain wall manufacturers. Its contention is that retention of the contract by Cupples after Cupples is divested by Alcoa will frustrate the objective of the antitrust suit, and of the district court's preliminary injunction and final decree of divestiture, to restore Cupples as an independent and effective competitor; and that the government's acquiescence in this course demonstrates the inadequacy of its representation of the competitive interest that appellant asserts. We believe the contention is without merit.

The purpose of the preliminary injunction was to preserve the possibility of divestiture pending the entry of a final decree. To this end, Alcoa was enjoined from appropriating Cupples' goodwill and know-how, commingling Cupples' assets with its own, or otherwise acting to weaken Cupples. Obtaining the

valuable World Trade Center contract promoted rather than impaired the objectives of this decree, since it strengthened Cupples.

Because Cupples is subject to an order of divestiture, it operates in a shadow of uncertainty over its future which weakens its current competitive position. It has had personnel problems (J.S. App. A, p. 3a) and customers seeking to place large orders, like the Port Authority, cannot be sure that the current management will control the company when the orders must be filled. That Alcoa assisted Cupples to obtain a valuable contract in this difficult period facilitated eventual divestiture, and hence is entirely consistent with the district court's final decree. The contract makes Cupples an immeasurably more valuable bundle of assets to any prospective purchaser. Just as in *Cascade, supra,* this Court insisted that the acquired firm be given in divestiture any valuable properties acquired after the unlawful merger, so here the district court and the government quite properly took the position that the World Trade Center contract should go to the purchaser of Cupples along with its other properties.

We stress that before approving the contract the government made extensive inquiry to assure that Cupples would not be harmed, or divestiture delayed. Thus, it required Alcoa and Cupples to submit detailed information concerning the circumstances of the bidding and provide adequate assurances that Alcoa was not appropriating goodwill or know-how belonging to Cupples for the purpose of enhancing Alcoa's position should it enter the curtain wall business on its own. In exploring the effect upon divestiture, the government examined the proposed terms of

arrangements between Alcoa and Cupples and determined that they were not disadvantageous to Cupples. The president of Cupples submitted a detailed written statement indicating that the proposed contract would be very profitable for Cupples, which has been operating at only 85 percent of its capacity[5] since it would take up an additional 12 percent of its idle capacity without interfering with its other operations. The Department also received commitments from Alcoa designed to prevent the contract from standing in the way of divestiture of Cupples. In addition, Alcoa agreed that the purchaser of Cupples would have the right to ask the court for reformation of any contracts between Alcoa and Cupples if the purchaser found that they had been entered into improvidently.

As a result of its investigation and these assurances, the Antitrust Division was satisfied that the proposed contract would not hinder divestiture. With respect to the possible unlawful appropriation of Cupples' goodwill by reason of Alcoa's participation in the transaction, the Department secured commitments[6] from

[5] Cupples lost $1,397,000 in 1964 and $2,687,000 in 1965 (attachment to Defendant's Second Report Pursuant to Plan of Divestiture filed in the District Court, November 17, 1966).

[6] Appellant complains that it "had no opportunity to examine" the series of commitments which the government received from Alcoa to prevent Alcoa from acquiring, by reason of the World Trade Center contract, any goodwill belonging to Cupples (J.S. 10). A general description of these commitments was provided in the government's brief in opposition to intervention in the district court (R. 177-190). And defendants offered to disclose the specific terms of these commitments to the court provided they were received under seal; they only objected to placing these commitments in the public record where they might become known to potential purchasers of Cupples and thereby perhaps depress the purchase price (R. 211; Tr. 18).

Alcoa that it would assign the contract to Cupples if it won the award; that Alcoa would not advertise or represent that it secured the contract on the basis of its own expertise in the curtain wall field, or that it was the fabricator of the curtain wall for this project; and that after award of the contract Alcoa would inform the Port Authority and the architects, contractors and engineers with whom it had dealt that the know-how, technology, engineering and other expertise in the curtain wall field embodied in its proposal were furnished by Cupples. In addition, the Port Authority advised the Department that it would permit the assignment of the contract to Cupples.

We further emphasize that the district court did not routinely or uncritically accept the results of the government's inquiry. It conducted an evidentiary hearing at which appellant was permitted to offer evidence challenging Cupples' retention of the World Trade Center contract. Thus, appellant was accorded the substantial rights of an intervenor. Yet, it failed wholly to substantiate its charges; it cannot complain, therefore, because it was denied formal intervention. At the hearing it urged that "the low bid submitted by Alcoa has not been shown by the government or Alcoa to be profitable for Cupples rather than for Alcoa in supplying the necessary primary aluminum" (J.S. 9) and that the contract will require a "pre-commitment of a significant part of [Cupples'] pro-

ductive capacity for a period of years" (J.S. 16). Yet, it never questioned Cupples' president concerning the profitability of the contract, although it was aware of counsel's representation that it would benefit Cupples (Tr. 23, 24); it did not develop any testimony indicating that Cupples' productive capacity would be tied up disadvantageously; it presented no economic evidence showing that the contract might substantially lessen competition; and it did not demonstrate any conceivable basis upon which the district court could have concluded that the government was guilty of a default in acquiescing in the contract.[1]

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[1] Appellant purports to find in the government's application for modification of the final judgment, filed on March 31, 1967 (see Statement, *supra* fn. 2, p. 4; J.S. App. A), evidence that the government now admits it has inadequately represented the public interest. We believe that a fair reading of this memorandum plainly refutes this contention. Contrary to appellant's argument, when the government approved Alcoa-Cupples' bid for the Port Authority contract it did not represent to the district court that the contract alone would guarantee divestiture by February 1, 1967, the deadline in the decree. It stated only that the contract might enhance Cupples' saleability, thus serving the ultimate purpose of the decree. We still believe this. But since Alcoa has not yet succeeded in disposing of the company, the government believes that the district court should itself take steps to accomplish the divestiture through trustees directed to sell either to a private purchaser or at public sale to the highest bidder. So we have urged in the application for modification. This is a problem entirely separate from the Port Authority contract. The award of the Port Authority contract to Alcoa-Cupples is not in any way inconsistent with the trustee proposal, since it assures buyers that Cupples will be transferred with a very valuable order on its books. If anything the government's trustee motion demonstrates its diligence and concern for accomplishing prompt divestiture.

2. The district court did not abuse its discretion in denying permissive intervention. Rule 24(b) provides that "in exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." And the delay of the divestiture proceedings in this case while appellant seeks to set aside the award of the Port Authority contract would harm the ultimate objective of this suit—divestiture of Cupples from Alcoa.

CONCLUSION

The district court correctly denied intervention. The appeal should therefore be dismissed.[8]

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
DONALD F. TURNER,
Assistant Attorney General.
HOWARD E. SHAPIRO,
ROBERT K. JOHNSON,
Attorneys.

MAY 1967.

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[8] See *Sam Fox Publishing Co.* v. *United States*, 366 U.S. 683; *Westinghouse Broadcasting Co.* v. *United States*, 364 U.S. 518; *Allen Calculators, Inc.* v. *National Cash Register Co.*, 322 U.S. 137.

APPENDIX A

United States District Court, Eastern District of Missouri, Eastern Division

No. 61C147(2)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ALUMINUM COMPANY OF AMERICA AND CUPPLES PRODUCTS CORPORATION, DEFENDANTS

ORDER

The Court, having examined the complaint filed on April 27, 1961, having heard and considered oral arguments on plaintiff's Motion for Preliminary Injunction filed May 22, 1962, and having considered affidavits and exhibits in support of and in opposition to the Motion,

Orders that, pending final disposition of this action, the defendants, Aluminum Company of America and Cupples Products Corporation, are hereby enjoined as follows:

1. From any further consolidating or commingling of any business assets, financial, good will, personnel or otherwise;

2. Defendant Cupples shall continue to exercise independent judgment and activity in its operations;

3. Defendants Alcoa and Cupples shall continue to publicize distinctly the name of Cupples in connection with products Cupples manufactures and to make no more pronounced indication of Cupples affiliation

with defendant Alcoa than exists in the exhibits before this Court;

4. Defendants Cupples and Alcoa shall maintain separate pension plans;

5. Defendants Cupples and Alcoa shall maintain separate sales organizations;

6. Defendants Cupples and Alcoa are restrained from transferring any Cupples employees to Alcoa, and Alcoa is restrained from employing any of Cupples employees;

7. Defendant Alcoa is enjoined from selling or conveying any Cupples stock acquired by Alcoa;

8. Defendant Alcoa shall continue to hold the title to the real estate and equipment of the recently built plant at Corona, California, in its subsidiary Gateway Properties, Inc. This plant shall be operated by Cupples and the products made therein shall be Cupples products and shall be sold and advertised as Cupples products.

The Memorandum containing findings of fact and conclusions of law is adopted and by reference made a part of this Order.

FINAL JUDGMENT

This Court having conducted a trial as to plaintiff's complaint and having rendered its findings of fact and conclusions of law thereon, dated September 22, 1964, and having had a further hearing on November 24, 1964, relating to the entry of a final judgment,

[7] It is hereby ordered, adjudged and decreed as follows:

1. The acquisition of the stock of defendant Cupples Products Corporation (Cupples) by defendant Aluminum Company of America (Alcoa) is in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

2. Within one year from the date of the entry of this final judgment defendant Alcoa shall:

(1) divest itself of all right, title and interest in the assets (including all the real estate) which are located at Corona, California, and which have been operated by defendant Cupples; and

(2) divest itself of all ownership of the stock, share capital, assets, tangible and intangible, and other interest it may have in defendant Cupples;

3. Within sixty (60) days from the date of entry of this final judgment, defendant Alcoa shall submit to this Court for approval and to the plaintiff a detailed plan setting forth the manner by which defendant Alcoa proposes to accomplish the divestiture ordered in paragraph 2 hereof and a report stating the efforts made by defendant Alcoa to accomplish said divestiture. Within thirty (30) days after this submission, plaintiff shall notify the defendants of its objections, if any, to this plan. In the event that there are any such objections, the parties shall confer and, if they cannot thereby resolve their differences, a hearing will be held and the differences resolved by this Court. Divestitures shall then be accomplished by defendants in accordance with the plan approved by the Court.

4. The divestiture ordered in paragraph 2 hereof shall be made in good faith as a going business, shall be absolute, unqualified, and unconditional and to a person or corporation in which defendant Alcoa does not own stock or financial interest;

5. The Order entered by this Court on July 30, 1962, shall remain in effect, subject to further order of this Court, *Provided, however*, that nothing contained therein shall prohibit defendant Alcoa from

selling or conveying any of Cupples' stock, share capital or assets under the plan of divestiture approved by this Court pursuant to paragraph 3 of this final judgment.

6. Defendant Alcoa shall pay all taxable costs;

7. Jurisdiction is retained to enable any of the parties to petition for such further and different relief as may be necessary or appropriate to accomplish the terms of this final judgment or as may be necessary or appropriate for the construction or carrying out of this final judgment, for the enforcement of compliance therewith, and punishment of violations thereof.

ORDER MODIFYING ORDER OF JULY 30, 1962, TO PERMIT CLOSING OF CORONA PLANT

Having heard argument on defendants' motion to modify the order entered in this action on July 30, 1962, so as to permit defendants to close the plant at Corona, California, and having fully considered the arguments presented by plaintiff and defendants with respect to said motion, the Court is of the opinion that defendants are entitled to the modification which they seek because:

1. The Corona plant has been sustaining substantial and continuing losses and there are no reasonable grounds for believing that this condition will improve.

2. The substantial losses sustained as a result of the operation of the Corona plant are adversely affecting the strength and viability of Cupples, and will continue to do so unless the Corona plant is shut down.

Therefore, it is hereby

Ordered that notwithstanding paragraph 8 of the order entered in this action on July 30, 1962, defendants may close the plant located at Corona, California, which is presently being operated by de-

fendant Cupples Products Corporation under a lease from Delcalo; Inc., a wholly owned subsidiary of defendant Aluminum Company of America, *provided, however,* that defendant Aluminum Company of America shall see to it that said plant is maintained in good condition, capable of being reactivated promptly.

APPENDIX B

United States District Court, Eastern District of Missouri, Eastern Division

No. 61C147(2)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ALUMINUM COMPANY OF AMERICA AND CUPPLES PRODUCTS CORPORATION, DEFENDANTS

PLAN OF DIVESTITURE

1. The purpose of this Plan is to provide for the divestiture of Cupples Products Corporation (Cupples) as a going business capable of engaging in the manufacture, distribution, and sale of fabricated aluminum products, such as curtain wall, windows, extrusions, suspended ceiling systems, doors, door frames, store fronts and entrances.

2. Within one year from February 1, 1966, Alcoa shall divest itself of all ownership of the business and assets of Cupples, including: (a) all Cupples trademarks, trade names, good will and other intangible assets; (b) all tangible assets of Cupples, including the plants operated by Cupples before the acquisition at St. Louis, Missouri, and Dowagiac, Michigan, and the warehouse operated by Cupples before the acquisition at Dallas, Texas, including all additions and improvements made to the said plants and warehouse since the acquisition; and (c) at the option of the purchaser, the assets (including all the real estate) which

are located at Corona, California, and which have been operated by Cupples under lease from Delcalo, Inc. Pending divestiture, and unless otherwise ordered by the Court, the St. Louis and Dowagiac plants and the Dallas warehouse shall be maintained in good order as operating units; the Corona plant shall be maintained in good condition capable of being reactivated promptly.

3. The divestiture required by this Plan shall be accomplished either by sale of Cupples' stock or, at the option of the purchaser, by sale of all Cupples' assets, tangible and intangible, and assumption by the purchaser of Cupples' liabilities. If the purchaser elects to take the assets at Corona, California, referred to in Paragraph 2(c), such assets shall be conveyed by Alcoa.

4. The divestiture required by this Plan shall be absolute, unqualified, and unconditional and to a person or corporation not disapproved by the Court; *provided, however,* that nothing herein shall prohibit Alcoa from retaining such reasonable security or other interest as the Court may approve.

5. The divestiture required by this Plan shall be at a price and upon terms to be approved by the Court.

6. Mr. Leon E. Hickman, an Executive Vice-President of Alcoa, or such other person as Alcoa shall suggest and the Court shall approve, will be responsible for implementing this Plan of Divestiture. Under his direction and control, a systematic effort will be made to locate a purchaser. As a first step, a list of prospective purchasers will be compiled consisting of firms or individuals (a) which have previously expressed an interest in acquiring Cupples, or (b) which Alcoa or Cupples, based on its knowledge of the aluminum fabricating, curtain wall, and related industries, believes may be possible purchasers. Each of

the listed prospects will then be approached, beginning with the most promising, in order to determine whether it is interested in considering the acquisition of Cupples. For this purpose, an appropriate brochure will be prepared setting forth relevant financial and factual information as to Cupples' assets, earnings, product line, and the like. If a prospect indicates a *bona fide* interest in acquiring Cupples, further and more detailed information will be provided. If the direct approach outlined above has not developed any serious leads in ninety (90) days, several (approximately 2 to 4) business brokers with national connections would be retained to aid in finding a purchaser. Since such brokers would be engaged on a non-exclusive basis, Alcoa would be free to continue with its direct efforts to effect a sale. If, after an additional ninety (90) days, the combined efforts of Alcoa and the brokers have not developed serious leads, Alcoa would take such other and further steps as shall be appropriate to find a purchaser.

7. Ninety (90) days after February 1, 1966, and at ninety (90) day intervals thereafter, Alcoa will file with the Court and serve upon the plaintiff a Report setting forth the steps taken in execution of this Plan. If any offer has been received but not accepted during the period covered by the Report, the Report shall identify the offeror and describe the terms and conditions of such offer. Upon petition of the plaintiff, the Court may be asked to determine whether any such offer must be accepted by Alcoa under the provisions of the Final Judgment and this Plan of Divestiture.

8. As soon as Alcoa and a prospective purchaser have agreed upon the terms for a sale of Cupples, Alcoa shall so advise the Court, with notice to plaintiff, identifying the purchaser and setting forth in appropriate detail the terms and conditions of the proposed

sale. If within thirty (30) days after receiving such notice, the plaintiff does not object to the proposed sale, and the Court does not disapprove *sua sponte*, Alcoa shall proceed forthwith to effectuate the sale. If within the said thirty (30) day period the plaintiff objects, the parties shall confer, and if they cannot thereby resolve their differences, a hearing will be held and the differences resolved by the Court. If plaintiff's objections are overruled, Alcoa shall go forward with the sale; if plaintiff's objections are sustained and the Court disapproves the proposed sale, Alcoa shall continue its effort to effect a sale in accordance with this Plan.

9. If the purchaser of Cupples in a sale effected pursuant to this Plan elects not to take the Corona assets referred to in Paragraph 2(c), Alcoa will dispose of the said Corona assets separately.

10. In the event no acceptable offer is received within twelve (12) months after February 1, 1966, either party, upon notice to the other, may petition the Court for such modification of the Final Judgment and this Plan as may be appropriate in the circumstances.

JAMES H. MEREDITH,
United States District Judge.

DATED: FEBRUARY 18, 1966, ST. LOUIS, MISSOURI.

U.S. GOVERNMENT PRINTING OFFICE: 1967